BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Wisconsin Public Service Corporation for a Certificate of Authority to Acquire a 99 MW Wind Generation Facility in Jamestown and Oakdale Townships, in Howard County, Iowa — 6690-CE-194

CERTIFICATE AND ORDER

On December 27, 2007, Wisconsin Public Service Corporation (WPSC) filed an application with the Commission for authority under Wis. Stat. § 196.49 and Wis. Admin. Code ch. PSC 112 to construct, own, and operate a wind electric generating facility. The facility, known as the Crane Creek Wind Project, will be located in the townships of Oak Dale, Jamestown, and Saratoga, Howard County, Iowa. The project will include approximately 66 wind turbines with a total generating capacity of approximately 99 megawatts (MW). The project will use General Electric 1.5 MW sle model wind turbines with 80-meter towers.

The application is APPROVED, subject to conditions and as modified by this Certificate and Order.

Findings of Fact

1. WPSC is a public utility, as defined in Wis. Stat. § 196.01(5)(a), engaged in rendering electric service in Wisconsin. WPSC is proposing to construct a wind-powered electric generating facility, to be known as the Crane Creek Wind Project, as described in its application and as modified by this Certificate and Order. WPSC estimates the total capital cost of the project to be $251,000,000, including allowance for funds used during construction.

2. Conservation or other renewable resources, as listed in Wis. Stat. §§ 1.12 and 196.025, or their combination, are not cost-effective alternatives to WPSC's proposed facility.

3. The WPSC project, as modified by this Certificate and Order, satisfies the reasonable needs of the public for an adequate supply of electric energy.

4. The WPSC project, as modified by this Certificate and Order, will not substantially impair WPSC's efficiency of service or provide facilities unreasonably in excess of probable future requirements. In addition, when placed in operation, the project will increase the value or available quantity of WPSC's electric service in proportion to its cost of service.

5. The WPSC project, as modified by this Certificate and Order, assists WPSC in complying with the Renewable Portfolio Standard under Wis. Stat. § 196.378.

6. A brownfield site for the project is not practicable.

Conclusions of Law

The Commission has jurisdiction under Wis. Stat. §§ 1.11, 1.12, 196.02, 196.025, 196.395, 196.40, and 196.49, and Wis. Admin. Code chs. PSC 4 and 112, to issue a Certificate and Order authorizing WPSC, as an electric public utility, to construct and place in operation a wind-powered electric generation facility with a capacity of approximately 99 MW and to impose the conditions specified in this Certificate and Order.

Discussion

WPSC is a public utility, as defined in Wis. Stat. § 196.01(5)(a), engaged in rendering electric service in Wisconsin. It is proposing to construct the Crane Creek Wind Project electric generating facility with approximately 66 wind turbines with a generating capacity of approximately 99 MW. The project will be acquired from enXco, an affiliate of EDF Energies Nouvelles. WPSC will be responsible for easement acquisition, routing, permitting, and

construction of the overhead interconnection line from the project collection point to an associated electrical substation, which will interconnect the project to the existing transmission system. The project will be acquired by WPSC under two agreements: an asset sale agreement, and a turnkey engineering procurement and construct agreement. WPSC estimates that the project will have an operational life of 30 years. WPSC states that the Crane Creek Wind Project is an out-of-state project that will receive all approvals applicable in Iowa.

This Certificate and Order is the Commission's final action on WPSC's application for authority under Wis. Stat. § 196.49 and Wis. Admin. Code ch. PSC 112 to construct, own, and operate a wind electric generating facility in Howard County, Iowa.

While the Crane Creek Wind Project is located in Iowa and will receive all approvals applicable in Iowa, WPSC, as a public utility, is required to obtain construction authority for the project under Wis. Stat. § 196.49 and Wis. Admin. Code ch. PSC 112. As a result, WPSC is required to obtain authorization to construct the project from the Commission as the cost of the project exceeds the construction cost filing threshold listed in Wis. Admin. Code § PSC 112.05(3)(a)3.

WPSC is in the process of securing the rights to interconnect the Crane Creek Wind Project to the transmission grid.

On December 27, 2007, WPSC filed with the Commission its application for authority under Wis. Stat. § 196.49 and Wis. Admin. Code ch. PSC 112 to construct, own, and operate the proposed wind electric generating facility. Subsequent to the filing, Commission staff submitted several data requests to the applicant.

In its January 23, 2008, Notice of Investigation in this docket, the Commission gave notice that this is a Type III action under Wis. Admin. Code § PSC 4.10(3). Type III actions

normally do not require the preparation of an environmental impact statement (EIS) or an environmental assessment (EA) under Wis. Stat. § 1.11.

The Commission investigated the potential for significant environmental effects that would occur as a result of WPSC's ownership and operation of the Crane Creek Wind Project and determined that preparation of neither an EIS nor an EA is required.

Project Need

According to Commission staff's Electric Generation and Expansion Analysis System (EGEAS) modeling for the proposed project, the optimal, least-cost expansion plan would not include any more generating facilities prior to 2018. In 2018, the EGEAS model suggests that more fossil fuel generation would be the least-cost option. However, while the modeling indicates that constructing more fossil fuel generation could be less expensive than WPSC's wind project, at this time it is difficult to identify exactly how much less expensive. The exact amount of any cost premium depends upon variables such as the cost of fossil fuels in the future, when the United States is likely to begin regulating greenhouse gas emissions, and the extent to which WPSC may sell its wind energy at wholesale.

While modeling is an important analytical tool available to the Commission as it does its needs determination, it is only one factor to be considered. A Renewable Portfolio Standard (RPS) exists in Wisconsin, and the Commission must consider the utility's obligation to increase the amount of renewable energy resources in its system to meet the RPS. The RPS in 2005 Wisconsin Act 141 (Act 141) and Wis. Stat. § 196.378, which took effect on April 1, 2006, built upon state policy to aggressively increase the level of renewable resources in the electric supply mix. Under these requirements, each Wisconsin electric provider must increase its renewable energy levels by 2 percentage points by 2010 and by 6 percentage points by 2015, above its 2001

to 2003 baseline average. With the addition of the Crane Creek Wind Project, WPSC will generate approximately 859,000 megawatt hours (MWh) of renewable energy in 2010 to meet its first obligation under Act 141 and will be required to generate approximately 1,190,000 MWh in 2015. Assuming commercial operation by the end of 2009 as planned, this project will allow WPSC to meet its 2010 obligation under the RPS.

Under Wis. Stat. § 196.49(3)(b), at its discretion, the Commission may refuse to authorize a construction project if the project will do any of the following:

1. Substantially impair the efficiency of the service of the public utility.
2. Provide facilities unreasonably in excess of the probable future requirements.
3. When placed in operation, add to the cost of service without proportionately increasing the value or available quantity of service unless the public utility waives consideration by the commission, in the fixation of rates, of such consequent increase of cost of service.

Because of the requirements of the RPS, WPSC requires more renewable resource generating facilities. Based on WPSC's application, this project is a means of complying with WPSC's renewable resource requirements and the project meets the criteria specified in Wis. Stat. § 196.49(3)(b). The project will not result in unreasonable excess facilities and will satisfy the reasonable needs of the public for an adequate supply of electric energy.

The Commission must implement a state energy policy when reviewing any application. The Energy Priorities Law establishes the preferred means of meeting Wisconsin's energy demands as listed in Wis. Stat. §§ 1.12 and 196.025(1).

The Energy Priorities Law, Wis. Stat. § 1.12, creates the following priorities:

> **1.12 State energy policy.** (4) PRIORITIES. In meeting energy demands, the policy of the state is that, to the extent cost-effective and technically feasible, options be considered based on the following priorities, in the order listed:
> (a) Energy conservation and efficiency.
> (b) Noncombustible renewable energy resources.
> (c) Combustible renewable energy resources.

(d) Nonrenewable combustible energy resources, in the order listed:
1. Natural gas.
2. Oil or coal with a sulphur content of less than 1%.
3. All other carbon-based fuels.

In addition, Wis. Stat. § 196.025(1) declares, "To the extent cost-effective, technically feasible and environmentally sound, the commission shall implement the priorities under s. 1.12(4) in making all energy-related decisions . . . ." Because wind is a noncombustible renewable resource, WPSC's proposed electric facility fits within the second-highest statutory priority.

While each of these statutes is applicable to the project at hand, there is a certain degree of friction that exists between them that must be reconciled. Wis. Stat. § 196.49 requires the Commission to consider whether a proposed project "provide[s] facilities unreasonably in excess of probable future requirements." The RPS law under Wis. Stat. § 196.378(2) requires the utility to build to meet its 2010 benchmark, regardless of whether new generation is needed. Wis. Stat. § 196.378. It should be noted that Wis. Stat. § 196.49 does not prohibit the construction of unnecessary generation, but gives the Commission the discretion to reject or approve the application for generation that is "in excess of future probable requirements."

The second area to consider is the competing directives on the cost of the proposed generation. Wis. Stat. § 196.49 requires the Commission to consider whether the proposed project "add[s] to the cost of service without proportionately increasing the value or available quantity of service." In contrast, the RPS statute requires utilities to increase the renewable energy percentage and, under Wis. Stat. § 196.378(2)(d), the Commission shall allow a utility to recover the cost of renewable energy from the ratepayer.[1] While the modeling in this case

[1] The RPS law creates an off-ramp if a utility finds that compliance with the RPS will "result in unreasonable increases in rates." Wis. Stat. § 196.378(2)(e)2.

suggests that WPSC does not need an additional generation facility until 2018, Wis. Stat. § 196.49(3)(b) gives the Commission the discretion to reject or approve an application for a project that disproportionately adds to the cost of service when considering the value or available quantity of service.

The third area of overlap arises between the RPS and the Energy Priorities Statute, Wis. Stat. § 1.12. The Energy Priorities Statute lists energy conservation and efficiency as a higher priority than renewable generation, such as wind. Here, the applicant does not propose any conservation or efficiency measures. WPSC states the project was designed to meet the RPS requirement and energy conservation cannot be substituted under the energy priorities law.

When construing Wis. Stat § 196.49 and Wis. Stat. § 196.378, it is important to apply two rules of statutory construction:

1. Where two statutes relate to the same subject matter, it is the specific statute that controls the general statute. *Kramer v. City of Hayward,* 57 Wis. 2d 302, 311, 203 N.W.2d 871 (1973).
2. "It is a cardinal rule of statutory construction that conflicts between statutes are not favored and will be held not to exist if the statutes may otherwise be reasonably construed." *State v. Delaney,* 259 Wis. 2d 77, 84 658 N.W.2d 416 (2003). When statutes on the same subject conflict or are inconsistent with one another, courts must attempt to harmonize them in order to effectuate the legislature's intent. The statutory construction doctrine of *in pari materia* requires a court to read, apply and construe statutes relating to the same subject matter in a manner that harmonizes them in order to effectuate the legislature's intent. *Turner v. City of Milwaukee,* 193 Wis. 2d 412, 420, 535 N.W.2d 15 (Ct. App. 1995).

Reviewing these statutes in light of the rules of construction, the Commission construes the RPS statute as more specific than Wis. Stat. § 196.49. Therefore, to the extent there is a conflict between the statutes, the requirements of the RPS statute control.

Moreover, the Commission balances competing interests and approves this project to implement the RPS. The need to develop renewable energy sources, a priority established by the legislature, outweighs the concern that this project may be providing energy sooner that demand indicates.

Similarly, for the Commission to implement energy priorities, it must determine and balance whether any higher priority alternatives to a proposed project would be cost-effective, technically feasible and environmentally sound while meeting the objectives the proposed project is intended to address. Regarding other noncombustible renewable energy resources, no other form of currently available renewable generation is as cost-effective and technically feasible as wind. For these reasons, the Commission concludes that the WPSC project complies with the Energy Priorities Law.

Impact on Locational Marginal Prices and Congestion

WPSC modeled the entire Midwest in PROMOD to calculate the annual locational marginal price (LMP) difference between the WPSC load commercial pricing (cp) node and various cp nodes in southern Minnesota and eastern South Dakota with increasing amounts (up to 6,000 MW) of new wind generation. One of the cp nodes in Minnesota is very close to the WPSC wind generation facility.

WPSC selected the annual LMP difference between the WPSC load cp node and the cp node in Minnesota close to the WPSC wind generation facility at the 3,000 MW new wind injection level. This annual LMP difference was included as a variable cost in the new wind planning alternative modeled in EGEAS by WPSC and Commission staff.

The new wind planning alternative in EGEAS was modeled with a high capacity factor typical of that found in good wind regimes west of Wisconsin. The LMP adder represents the

additional cost of delivering this energy to Wisconsin. The PROMOD results show that, in general, the further west from Wisconsin the wind generation is sited, the larger the LMP difference between the WPSC load cp node and the wind generator cp nodes.

As such, in locating wind generation to the west of Wisconsin, the tradeoff is higher capacity factor wind farms versus increased congestion and losses. The PROMOD results also show that as more wind generation is added to the west, the LMP difference between the WPSC load and the wind generators increases mostly due to congestion. A large part of the current LMP difference is due to losses, which will not go away when new lines are built. The LMP difference due to losses may be reduced when a new line is added, but the PROMOD results suggest the change is small. Based on this analysis, the projected LMPs for delivery of energy from the proposed project to the WPSC cp node are reasonable.

Environmental Factors

The proposed project would require no environmental permits from any governmental agency in Wisconsin. The Iowa Department of Natural Resources (Iowa DNR) is coordinating environmental review of the project and has indicated that there should be no problem acquiring any needed environmental permits. The project is in a rural area where farming is the predominant land use. There are few riparian or wooded resources. The three areas of publicly-owned land within the project boundary are either too small or do not have the vegetation to harbor federal or state endangered or threatened species. The developer's 500-foot buffer around these areas satisfies any Iowa DNR concerns. Initial bat and bird studies have shown a potential for fewer collisions than for the Top of Iowa wind farm, and the Iowa DNR will require no further studies for this project. Surveys for prairie remnants will be performed

after detailed project design and before construction, and if any remnant is found, it should be possible to avoid impacts through minor changes in facility location.

The proposal does not conflict with any land use plans or zoning requirements, and will not be located in major floodplains. There are no schools, nursing homes, hospitals, or daycare centers within the project area. No known archeological or historic sites would be affected.

WPSC's project will have a number of positive environmental effects. The energy produced by the project will avoid many of the impacts that fossil fuel and nuclear power electric generation create. The operation of this wind farm will produce none of the air pollutants that are regulated under the federal Clean Air Act. It will release no greenhouse gases, which are the electric industry's principal contribution to global warming and climate change, and it will emit no hazardous air pollutants such as sulfuric acid, hydrochloric acid, ammonia, benzene, arsenic, lead, formaldehyde, or mercury. Furthermore, it will generate power without using any significant amount of water or producing any solid waste.

This project will support Wisconsin's goal of increasing its reliance upon renewable resources. It fits well with existing land uses, will help preserve the agricultural nature of the project area, will impose no reliability, safety, or engineering problems upon the electric system, and will have no undue adverse impacts on environmental values. After weighing all the elements of WPSC's project, including the conditions imposed by this Certificate and Order, the Commission finds that authorizing the project will promote the public health and welfare and is in the public interest.

Brownfield Siting

Under Wis. Stat. § 196.49(4), the Commission may not issue a certificate for the construction of electric generating equipment unless it determines that brownfields are used to

"the extent practicable." However, Wisconsin does not have a single brownfield site, or set of contiguous sites, that would be of sufficient size and would meet the siting criteria of available wind resources, land, and electric infrastructure. WPSC's project complies with Wis. Stat. § 196.49(4).

Compliance with Wisconsin Environmental Policy Act

Wis. Stat. § 1.11 requires all state agencies to consider the environmental impacts of "major actions" that could significantly affect the quality of the human environment. In Wis. Admin. Code ch. PSC 4, the Commission has categorized the types of actions it undertakes for purposes of complying with this law. As provided by this rule, and due to the fact that this project, which was planned, developed, and permitted for construction in a state other than Wisconsin, would be constructed regardless of WPSC's involvement, the Commission categorized this project as a Type III action, which normally requires the preparation of neither an EIS nor an EA. The Commission's review of the application and environmental permitting requirements concluded that the project is unlikely to have a significant impact upon the quality of the human environment. The Commission finds that the requirements of Wis. Stat. § 1.11 and Wis. Admin. Code ch. PSC 4 have been met.

Project Cost and Construction Schedule

WPSC proposes to place Crane Creek Wind Project in service by year-end 2009. WPSC requests that the Commission authorize the project cost assuming that construction work begins in September 2008. On this basis, the estimated cost of the project is $251,000,000.

In its application, WPSC requested approval from the Commission to earn a return at the economic cost of capital for any funds advanced to the transmission owner that will be reimbursed under the interchange agreement. WPSC further stated in its application that it

would treat any interest received from the transmission owner as utility revenue in future rate case proceedings. This is the same rate treatment proposed by WPSC in its last two rate proceedings[2] for its expenditures associated with the construction of the transmission interconnection for its Weston 4 generating facility. The Commission denied the requested treatment in each of its orders in those dockets. In its Final Decision in docket 6690-UR-118, the Commission stated: "This investment is not and will not be part of the company's rate base. The Commission reaffirms that the interconnection will ultimately become part of ATC's rate base and, as such, all of the costs should be borne by ATC and recovered through its transmission tariffs."[3] Thus, the Commission finds WPSC's request to earn a return on its expenditures related to the construction of the interconnection facilities to be unreasonable. The request is denied. WPSC should account for its interconnection expenditures as a nonutility investment on its balance sheet.

Certificate

WPSC may construct the Crane Creek Wind Project with a generating capacity of up to 99 MW, as described in its application and subsequent filings and as modified by this Certificate and Order.

Order

1. WPSC may construct the Crane Creek Wind Project in conformance with the design specified in its application and subsequent filings, subject to the conditions specified in this Certificate and Order.

2. The total gross project cost is estimated to be $251,000,000.

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[2] Dockets 6690-UR-117 and 6690-UR-118.
[3] The Commission's January 11, 2007, Final Decision in docket 6690-UR-118, page 24.

3. This authorization is for the specific project as described in the application and subsequent filings and at the stated cost. Should the scope, design, or location of the project change significantly, or if the project cost exceeds $251,000,000 by more than 10 percent, WPSC shall promptly notify the Commission.

4. WPSC shall notify the Commission in writing, within 10 calendar days, of each of the following: the date of commencement of construction of the interconnection substation, the date of commencement of construction of project facilities other than the interconnection substation, and the date that the facilities are placed in service.

5. WPSC shall ensure that all necessary permits have been obtained prior to commencement of construction and operation of the facilities, and it shall submit to the Commission quarterly reports of the status of the environmental permitting process for the Crane Creek Wind Project. The first report is due 90 days after the issuance of this Certificate and Order and reports shall continue through commencement of operation of the project.

6. WPSC shall submit to the Commission the final actual costs segregated by major accounts within one year after the in-service date. For those accounts or categories where actual costs deviate significantly from those authorized, WPSC shall itemize and explain the reasons for such deviations in the final cost report.

7. WPSC may not earn a return from ratepayers on any expenditures associated with the construction of the interconnection to the grid.

8. Until its facility is fully operational, WPSC shall submit quarterly progress reports to the Commission that summarize the status of construction, the anticipated in-service date, and the overall percent of physical completion. WPSC shall include the date when construction

commences in its report for that three-month period. The first report is due for the quarter ending June 30, 2008, and each report shall be filed within 31 days after the end of the quarter.

9. WPSC shall comply with the requirements of the National Electric Safety Code when constructing, maintaining and operating its facility.

10. WPSC shall notify the Commission in writing within 10 days of any decision not to proceed with its project or to enter into any partnership or other arrangement with a third party concerning ownership or operation of the facility.

11. All commitments and conditions of this Certificate and Order shall apply to WPSC and to its agents, contractors, successors, and assigns.

12. This Certificate and Order takes effect on the day after it is mailed.

13. Jurisdiction is retained.

Dated at Madison, Wisconsin, May 22, 2008

By the Commission:

Sandra J. Paske
Secretary to the Commission

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See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Wisconsin Public Service Corporation for a Certificate of Authority to Acquire a 99 MW Wind Generation Facility in Jamestown and Oakdale Townships, in Howard County, Iowa	6690-CE-194

COMMISSIONER AZAR'S CONCURRENCE

I concur in the granting of a Certificate of Authority (CA) to Wisconsin Public Service Corporation (WPSC) for this Crane Creek Project for purposes of complying with the Renewable Portfolio Standard (RPS). I write a concurrence for two reasons: to express some differences with the majority's rationale for approval and to raise some broader issues concerning the Commission's evaluation of construction applications.

Basis for Approving the CA

Though the Order recognizes that the CA, Energy Priorities Statutes and the RPS statutes set forth seemingly competing directives on three issues,[1] I disagree with some of the findings of fact and discussion relating to this tension. I have attached to this concurrence the Order with redlined revisions that resolve my concerns with that Order.

[1] The tension between the CA and RPS statutes arises over when generation should be built and the cost of that generation. The Energy Priorities Statute and the RPS provide different mandates on whether energy efficiency and conservation should be preferred over renewables.

Commission Evaluation of Construction Applications

In the near future, Wisconsin ratepayers will spend an unprecedented amount for their electricity needs. Five factors are primarily driving this cost increase:

1. Reduction in carbon emissions from electrical generation;[2]
2. Installation of pollution controls for SOx, NOx and mercury on generation plants;
3. Installation of significant upgrades on aging generation plants; or, retirement of aging plants and construction of new generation;
4. Expansion and upgrade of the transmission grid; and
5. Construction of renewables.

Wisconsin is at a disadvantage because of a number of variables,[3] including our heavy reliance on a high-carbon fuel. We currently produce about 70 percent of our electricity from coal. Wisconsin must transition to a carbon-controlled world more efficiently than states which are not so dependent on coal, just to remain competitively neutral. In other words, to remain economically competitive, Wisconsin must spend its money more wisely than other states.

Accordingly, I do not believe we can afford to make future decisions in a vacuum on such things as the following:

- what type of new generation to build and where,
- which plants to retire, and
- what pollution control technologies to install on aging plants.

[2] Wisconsin does not have many options for reducing carbon emissions from electric generators. Wisconsin will likely be limited to such things as load reduction, carbon sequestration with tremendous infrastructure challenges, some types of renewable sources, and possibly nuclear generation.

[3] In contrast to other states, Wisconsin's challenges arise from the following: we have limited indigenous fuel sources and must pay transportation costs to import fuel; we likely have no capacity for in-state carbon sequestration; the Great Lakes limit our interstate transmission ties; and we have marginal in-state wind resources.

I believe the wisest decisions concerning these issues would be based on statewide data, not merely utility-specific data. For example, assume we receive an application from Utility A to install pollution control technologies (SOx, NOx and mercury) on an older plant (say, built in 1950) at a cost of $200,000,000. However, in nearby Utility B's service territory sits a five-year old plant that has excess capacity, which already has controls for SOx and NOx. Indeed, Utility B has long-term excess capacity throughout its service territory. When deciding whether Wisconsin's ratepayers should pay $200,000,000 to retrofit the 1950 plant, should the commissioners base their decision solely on information about Utility A or should the record also contain data on Utility B? Though this may appear to be a rhetorical question, it is not. Recent practice at the Commission has been to limit the record (and our decision) to Utility A's data. I believe that the Commission must act from a statewide perspective and use a wider lens when evaluating individual construction applications.

With this concurrence, I am asking that pertinent statewide data be included within the record of each significant construction docket. I cannot predict what data will be pertinent in advance; it will depend on the application. Such data could include statewide information on the following: load growth predictions, capacity, possible retirements, and plans for complying with the RPS and with SOx, NOx and mercury restrictions. Data on load growth predictions and capacity are already available and would be captured within EGEAS modeling. I understand that utilities already likely have capital plans for compliance with air-pollution regulations and the RPS, though the Commission may not have those plans.

This concurrence is not intended to suggest that we resurrect the Advance Plan process. What I am suggesting is that the commissioners be given more data in each construction docket so that we can evaluate the proposal within the broader context of what the state already has and what the state needs.[4]

As to the RPS, we should not step back from our current RPS of 10 percent by 2015, and I look forward to the Task Force on Global Warming's recommendations on whether we need to increase that RPS. The current RPS, and presumably any increased RPS, will include off-ramps should the costs of compliance "result in unreasonable increases in rates." Wis. Stat. § 196.378(2)(e)2. What makes a rate increase "reasonable" is relative and must be evaluated in context. A rate increase that would have been considered unreasonably high in years past could be deemed reasonable in the future given the environmental challenges of the day.[5]

This begs the question of how we should evaluate the reasonableness of rate increases arising from renewables. My thoughts on this subject are evolving. For instance, should our definition for the cost of a renewable project recognize that renewables provide hedges against the cost of carbon, the cost of fuel, and the cost of transporting fuel? The tensions among the RPS, CA and Energy Priorities Statutes demonstrate that our old models will not work well.

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[4] I agree with much of Chairperson Ebert's Concurrence. In fact, he suggests precisely some of the same actions that I am requesting, e.g., as needed, submitting data collected for the SEA as evidence in construction dockets. But I must take issue with the suggestion that I am advocating a mini-Advance Plan process in each and every case. To the contrary, I am only looking for targeted and pertinent data that is critical in our decision-making. The Commission has the power to manage the scope of each docket. If the scope of a docket becomes too broad, only we are to blame. I am confident that we can properly manage our dockets so that all of the necessary evidence is collected and a limited scope is preserved.

[5] Indeed, other energy options that society has deemed unreasonable in years past, should be re-evaluated, such as nuclear fission. We may decide that the risks involved with nuclear generation are too high and we are willing to pay as much as will be necessary to avoid that risk. Alternatively, we may find that the costs of complying with carbon restrictions, SOx, NOx and mercury are so onerous that we must reluctantly accept the risks attendant to nuclear generation in order to address the more pressing threat of global warming. Regardless of the answer, in these unprecedented times, we must have an honest debate on the nuclear issue.

We must develop a new framework to evaluate renewables, which brings me back to my call for more information in each construction docket. Providing the commissioners with more information upon which to base our decisions will provide us with the tools necessary to forge a new direction.

Dated at Madison, Wisconsin, May 22, 2008

By Commissioner Lauren L. Azar

Lauren Azar
Commissioner

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Attachment

2. Energy ~~C~~conservation and efficiency, ~~or~~ as listed in Wis. Stat. §§ 1.12 and 196.025, are not viable alternatives when complying with the State's renewable portfolio standard (RPS) as set forth in Wis. Stat. § 196.378(2).

~~2.~~3. The other renewable resources, as listed in Wis. Stat. §§ 1.12 and 196.025~~, or their combination,~~ are not cost-effective alternatives to WPSC's proposed facility when complying with the State's RPS as set forth in Wis. Stat. § 196.378(2).

~~3. The WPSC project, as modified by this Certificate and Order, satisfies the reasonable needs of the public for an adequate supply of electric energy.~~

4. The WPSC project, as modified by this Certificate and Order, will not substantially impair WPSC's efficiency of service.

5. Under a traditional needs analysis, the WPSC project would ~~or~~ provide facilities unreasonably in excess of probable future requirements.

6. ~~In addition, w~~When placed in operation, the project will increase the value ~~or available quantity~~ of WPSC's electric service in proportion to its cost of service because more of that service will be derived from carbon-free fuels.

~~4.~~7. Under a traditional cost analysis, the project would not increase the available quantity of WPSC's electric service in proportion to its cost of service. The record does not provide the data necessary for a new kind of cost analysis that would recognize global warming issues.

~~5.~~8. The WPSC project, as modified by this Certificate and Order, assists WPSC in complying with the ~~Renewable Portfolio Standard~~RPS under Wis. Stat. § 196.378.

~~6.~~9. A brownfield site for the project is not practicable.

normally do not require the preparation of an environmental impact statement (EIS) or an environmental assessment (EA) under Wis. Stat. § 1.11.

The Commission investigated the potential for significant environmental effects that would occur as a result of WPSC's ownership and operation of the Crane Creek Wind Project and determined that preparation of neither an EIS nor an EA is required.

Project Need

According to Commission staff's Electric Generation and Expansion Analysis System (EGEAS) modeling for the proposed project, the optimal, least-cost expansion plan would not include any more generating facilities prior to 2018. In 2018, the EGEAS model suggests that more fossil fuel generation would be the least-cost option. However, while the modeling indicates that constructing more fossil fuel generation could be less expensive than WPSC's wind project, at this time it is difficult to identify exactly how much less expensive. The exact amount of any cost premium depends upon variables such as the cost of fossil fuels in the future, when the United States is likely to begin regulating greenhouse gas emissions, and the extent to which WPSC may sell its wind energy at wholesale.

While modeling is an important analytical tool available to the Commission as it does its needs determination, it is only one factor to be considered. An ~~Renewable Portfolio Standard (RPS)~~ exists in Wisconsin, and the Commission must consider the utility's obligation to increase the amount of renewable energy resources in its system to meet the RPS. The RPS in 2005 Wisconsin Act 141 (Act 141) and Wis. Stat. § 196.378, which took effect on April 1, 2006, built upon state policy to aggressively increase the level of renewable resources in the electric supply mix. Under these requirements, each Wisconsin electric provider must increase its renewable energy levels by 2 percentage points by 2010 and by 6 percentage points by 2015, above its 2001

to 2003 baseline average. With the addition of the Crane Creek Wind Project, WPSC will generate approximately 859,000 megawatt hours (MWh) of renewable energy in 2010 to meet its first obligation under Act 141 and will be required to generate approximately 1,190,000 MWh in 2015. Assuming commercial operation by the end of 2009 as planned, this project will allow WPSC to meet its 2010 obligation under the RPS.

Under Wis. Stat. § 196.49(3)(b), at its discretion, the Commission may refuse to authorize a construction project if the project will do any of the following:

1. Substantially impair the efficiency of the service of the public utility.
2. Provide facilities unreasonably in excess of the probable future requirements.
3. When placed in operation, add to the cost of service without proportionately increasing the value or available quantity of service unless the public utility waives consideration by the commission, in the fixation of rates, of such consequent increase of cost of service.

Because of the requirements of the RPS, WPSC requires more renewable resource generating facilities. Based on WPSC's application, this project is a means of complying with WPSC's renewable resource requirements and the project meets the criteria specified in Wis. Stat. § 196.49(3)(b). ~~The project will not result in unreasonable excess facilities and will satisfy the reasonable needs of the public for an adequate supply of electric energy.~~

The Commission must implement a state energy policy when reviewing any application. The Energy Priorities Law establishes the preferred means of meeting Wisconsin's energy demands as listed in Wis. Stat. §§ 1.12 and 196.025(1).

The Energy Priorities Law, Wis. Stat. § 1.12, creates the following priorities:

> **1.12 State energy policy.** (4) PRIORITIES. In meeting energy demands, the policy of the state is that, to the extent cost-effective and technically feasible, options be considered based on the following priorities, in the order listed:
> (a) Energy conservation and efficiency.
> (b) Noncombustible renewable energy resources.
> (c) Combustible renewable energy resources.

suggests that WPSC does not need an additional generation facility until 2018, Wis. Stat. § 196.49(3)(b) gives the Commission the discretion to reject or approve an application for a project that disproportionately adds to the cost of service when considering the value or available quantity of service.

The third area of overlap arises between the RPS and the Energy Priorities Statute, Wis. Stat. § 1.12. The Energy Priorities Statute lists energy conservation and efficiency as a higher priority than renewable generation, such as wind. Here, the applicant does not propose any conservation or efficiency measures. WPSC states the project was designed to meet the RPS requirement and energy conservation cannot be substituted under the energy priorities law.

When construing Wis. Stat § 196.49 and Wis. Stat. § 196.378, it is important to apply two rules of statutory construction:

1. Where two statutes relate to the same subject matter, it is the specific statute that controls the general statute. *Kramer v. City of Hayward,* 57 Wis. 2d 302, 311, 203 N.W.2d 871 (1973).
2. "It is a cardinal rule of statutory construction that conflicts between statutes are not favored and will be held not to exist if the statutes may otherwise be reasonably construed." *State v. Delaney,* 259 Wis. 2d 77, 84 658 N.W.2d 416 (2003). When statutes on the same subject conflict or are inconsistent with one another, courts must attempt to harmonize them in order to effectuate the legislature's intent. The statutory construction doctrine of *in pari materia* requires a court to read, apply and construe statutes relating to the same subject matter in a manner that harmonizes them in order to effectuate the legislature's intent. *Turner v. City of Milwaukee,* 193 Wis. 2d 412, 420, 535 N.W.2d 15 (Ct. App. 1995).

Reviewing ~~these statutes~~the tension between the RPS and Certificate of Authority statutes in light of the rules of construction, the Commission construes the RPS statute as more specific than Wis. Stat. § 196.49. Therefore, to the extent there is a conflict between these two statutes, the requirements of the RPS statute control.

Moreover, the Commission must attempt to harmonize in order to effectuate the legislature's intent ~~balances competing interests and approves this project~~ to implement the RPS. The need to develop renewable energy sources, a priority established by the legislature, outweighs the concern that this project may be providing energy sooner that demand indicates.

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~~Similarly~~As to the conflict between the RPS and Energy Priorities Statute, for the Commission to implement energy priorities, it must determine and balance whether any higher priority alternatives to a proposed project would be cost-effective, technically feasible and environmentally sound while meeting the objectives the proposed project is intended to address. Though energy conservation and efficiency are a higher priority than renewables, under the RPS statute, the legislature has explicitly mandated that utilities develop renewable sources regardless of energy efficiency and conservation. Regarding other noncombustible renewable energy resources, no other form of currently available renewable generation is as cost-effective and technically feasible as wind. For these reasons, the Commission concludes that the WPSC project complies with the Energy Priorities Law.

Impact on Locational Marginal Prices and Congestion

WPSC modeled the entire Midwest in PROMOD to calculate the annual locational marginal price (LMP) difference between the WPSC load commercial pricing (cp) node and various cp nodes in southern Minnesota and eastern South Dakota with increasing amounts (up to 6,000 MW) of new wind generation. One of the cp nodes in Minnesota is very close to the WPSC wind generation facility.

WPSC selected the annual LMP difference between the WPSC load cp node and the cp node in Minnesota close to the WPSC wind generation facility at the 3,000 MW new wind

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Wisconsin Public Service Corporation for a Certificate of Authority to Acquire a 99 MW Wind Generation Facility in Jamestown and Oakdale Townships, in Howard County, Iowa — 6690-CE-194

CONCURRENCE OF CHAIRPERSON DANIEL EBERT

Commissioner Azar has raised a number of important generic issues related to the Commission's planning process in her concurring opinion. While the order at issue here relates to a specific construction application, I would like to comment on the generic issues raised regarding planning.

It would be helpful to recall how the Commission's planning process has evolved to its current state. For close to twenty years, the Advance Plan served as the primary tool for planning. In the late 1990's, with dramatic changes occurring in the electric industry, virtually every stakeholder concluded that the Advance Plan was too cumbersome to be an effective planning tool. And, given the fact that Wisconsin was facing the most severe energy reliability crisis in our state's history, one could argue that the Advance Plan failed to assist the Commission in meeting one of its core responsibilities, the state's energy security.

In its place, the Legislature created the Strategic Energy Assessment (SEA). Unlike the Advance Plan which typically looked at the next 20 years of Wisconsin's expected electricity supply and demand data, the SEA looked forward just two years and was simply meant to assess and evaluate the current and very near term supply of and demand for electricity. It soon became evident that the planning pendulum had swung too far in the other direction and the lack of a

more comprehensive planning tool reduced the Commission to evaluating key decisions -- construction cases and rate cases – without the benefit of vital information regarding the state's energy infrastructure.

In 2003, the Commission expanded the assessment period to seven years and included a dialogue on important policy issues. Each subsequent SEA has taken additional steps to more fully explore key policy issues and the interrelationship between those policy issues and has allowed the Commission to set broad policy goals for the following two years.

At the same time, several recent developments serve to both highlight the necessity of a somewhat more comprehensive planning tool and the increasing complexity of doing so on a state-by-state basis.

The first is the adoption or the certainty of future adoption of significant environmental regulations to control air emissions. In the past, the Commission has employed techniques such as sensitivity analysis in our econometric modeling to factor into our decision-making the possibility of future action. However, with SOx and NOx regulations in place, mercury regulations likely in place this year, and some form of carbon control likely within two years, the time may be ripe for the Commission to employ a more sophisticated environmental analysis.

In preparation for this development, last year I directed staff to begin informal consultations with our state's utilities to better understand their overall environmental control strategies. I did this with the thought that once mercury rules were in place, the Commission would be in a position to more comprehensively include environmental control analysis in our decision-making. While the mercury rules have not yet been adopted by the Department of Natural Resources, the time may very well be at hand to take the next steps.

But I would caution my colleagues to be thoughtful in taking this step. Sound data collection and modeling are the foundation of the analysis we seek. With good data and established regulatory policy, whether by statute or rule, modeling is a useful tool for the Commission. But, modeling results only provide analysis for a snapshot in time and generally become outdated the moment the ink dries on the analysis.

With regard to the impact of air emission regulations on our decision-making, regulatory certainty is a necessary prerequisite for useful analysis in Commission proceedings. Certainty of statutes or rules – in this case, the lack of federal policy and still evolving state policy covering mercury emissions and even less information regarding the nature and scope of carbon regulation – limits the usefulness of this analysis.

The second was the creation of the Midwest Independent Transmission System Operator (MISO) and the corresponding regionalization of the electric industry. In this new, more interconnected world, decisions made in one state will have dramatic impacts on the surrounding states. Infrastructure and energy efficiency investments or the passage of renewable portfolio standards and air emission reduction targets made in one state have an impact on neighboring states. In recognition of this interrelated world, MISO has recently stepped up its own regional planning efforts related to transmission investments. In this environment, the ability of one state to pursue an integrated resource planning process on its own and to implement the specific policy goals on its own is no longer realistic or desirable.

That does not mean we should abandon our strategic planning or assessment efforts. On the contrary, we should strengthen them and allow them to evolve during this dynamic period. The expanded SEA has served the Commission well. It has provided all stakeholders with

important electric supply and demand data in a timely manner and encourages consideration of current policy matters that strengthen the planning process.

The SEA, coupled with the Commission's generic policy discussions on energy efficiency, resource adequacy and a new emissions evaluation, provide the Commission with the tools necessary to accomplish the goal of creating a more comprehensive case-specific record, as needed, that includes significant evidence regarding all key decisional issues, including environmental planning. I am concerned that some might read Commissioner Azar's suggestions as an invitation to return to the Advance Plan or even an Advance Plan process for each and every case that comes before the Commission. That would be a recipe for gridlock. In effect, each and every case considered by the Commission would invite a full complement of stakeholders – customer groups, community groups, other utilities, environmental organizations, energy efficiency and renewable advocates, MISO, and business organizations -- to participate in order to protect or pursue their interests. This would result in the pendulum swinging too far back in the direction of the Advance Plan process.

Opening individual dockets to a mini-planning process would not only increase the likelihood of a sprawling record, but also frustrate the Commission's ability to meet statutory deadlines. For our larger dockets, we have a maximum of 360 days from the date of completed application to decision. In the dynamic and ever changing energy world of 2008, the regulatory certainty provided by timelines is even more important than ever. Given the complexity of those applications and the Commission's commitment to public participation, meeting that deadline is often difficult to achieve. Broadening the scope of those dockets would, I am afraid, make it impossible to achieve.

As Commissioner Azar accurately points out, the Commission will likely have controversial dockets on issues such as emissions control, new generation, and transmission that will materially affect Wisconsin's ratepayers for years to come. In fact, there are several currently before the Commission. And there are important overlapping policy issues that will necessarily be part of these records. We have opportunities to provide those dockets with crucial information that do not require an expansion of the record in each application.

One such opportunity is provided in work being done by MISO. The Commission is expending considerable resources on MISO-related issues such as resource adequacy, cost sharing, and planning responsibilities that can be factored into our own dockets.

In addition, the Commission may, as appropriate, ensure that relevant information from one docket is considered in another. The most important has been and will continue to be the SEA. Our SEA provides the Commission with detailed information on the state's current and future supply and demand of electricity along with analyses of key industry issues. The Commission has used generic dockets to isolate certain issues revealed in the SEA and has used the results of the generic dockets to inform other dockets. That said, I would caution against the overuse of generic dockets. To be useful, the dockets must be relevant, targeted, and contain clearly stated objectives.

A fourth and final opportunity is in statutory changes. When the Commission sees that it lacks the legal authority to take initiatives that would benefit the state and its ratepayers because of changes in the industry that are no longer compatible with existing statutes and rules, we should work with the Legislature to take corrective action.

Commissioner Azar is right to raise these issues, and I share her desire to ensure that critical information is available in the decision-making process. Without this evolution in our regulatory structure, the Commission cannot make the best, most economical decisions in fulfilling our statutory obligation to ensure we have a reliable supply of energy at affordable costs with the fewest environmental impacts.

However, one thing I have learned during my time at the Commission is that it is difficult to contain dockets to specific and manageable issues, and they may become susceptible to paralysis by analysis. The reality is that we have timelines to meet in dockets, and we can use tools already at our disposal to accomplish the objective of sound regulatory decision-making. The regulatory process has been and will continue to be an evolving one as we react to increasingly fast and dramatic changes to the electric industry. As I come to the end of my time at the Commission, I am confident that the processes in place, with a few tweaks, will continue to balance the interests of the many stakeholders that the Commission serves in a timely and effective manner.

Dated at Madison, Wisconsin, May 22, 2008

Daniel R. Ebert
Chairperson

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